

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 HANIF ABDULLAH MUJAHID,

9 Plaintiff,

10 v.

11 KELLY J. CUNNINGHAM, et al.,

12 Defendants.

CASE NO. C10-5916BHS

ORDER ADOPTING IN PART  
AND DECLINING TO ADOPT IN  
PART REPORT AND  
RECOMMENDATIONS

13 This matter comes before the Court on the Report and Recommendation (“R&R”)  
14 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 78),  
15 Defendants’ objections to the R&R (Dkt. 79), and Plaintiff’s objections to the R&R (Dkt.  
16 80).

17 **I. PROCEDURAL AND FACTUAL HISTORY**

18 This is a civil rights case brought out of Plaintiff Hanif Abdullah Mujahid’s  
19 (“Mujahid”) concerns regarding his receipt of mail and publications, and the policies  
20 regulating such receipt, while residing at the Special Commitment Center (“SCC”), a  
21 facility for persons committed or detained as sexually violent predators under RCW §  
22 71.09.

1 On November 8, 2011, the magistrate judge issued an R&R granting in part and  
2 denying in part Defendants' motion for summary judgment. Dkt. 78. On November 22,  
3 2011, Defendants filed objections to the R&R (Dkt. 79) and on November 25, 2011,  
4 Mujahid also filed objections (Dkt. 80).

5 Because the recitation of facts contained in the R&R are largely undisputed, the  
6 Court adopts the fact section of the R&R unless otherwise noted (Dkt. 78 at 3-10).

## 7 **II. DISCUSSION**

8 As an initial matter, the Court notes that neither party specifically<sup>1</sup> objects to the  
9 magistrate judge's findings in the R&R that (1) Defendants, as state employees working  
10 for the SCC, are immune from suit in their official capacity under the Eleventh  
11 Amendment; and (2) that Mujahid has failed to submit sufficient evidence to defeat  
12 Defendants' motion for summary judgment on his access to courts claim. Accordingly,  
13 the Court adopts the R&R with respect to these issues, and Mujahid's access to courts  
14 claim, as well as his claims against Defendants in their official capacities, must be  
15 dismissed.

### 16 **A. Standard of Review**

17 The Federal Rules of Civil procedure provide that, once a timely objection has  
18 been made to a magistrate judge's R&R:

---

19  
20 <sup>1</sup> Although Mujahid states in his objections that he "objects to any dismissal" this is a  
21 non-specific objection and need not be considered by the Court. *See Howard v. Secretary of*  
22 *Health and Human Services*, 932 F.2d 505, 509 (6th Cir. 1991) (stating that a general objection  
to the entirety of a magistrate's report, without specifying a single issue of contention, "has the  
same effects as would a failure to object" and need not be considered by the court).

1 [T]he district judge to whom the case is assigned shall make a de novo  
2 determination upon the record, or after additional evidence, of any portion  
3 of the magistrate's disposition to which specific written objection has been  
4 made in accordance with this rule. The district judge may accept, reject, or  
5 modify the recommended decision, receive further evidence, or recommit  
6 the matter to the magistrate with instructions.

7 Fed. R. Civ. P. 72(b).

8 **B. Mujahid's Right to Receive Certain Mail**

9 First, Defendants object to the R&R based on the magistrate judge's findings that  
10 Mujahid did not appear to challenge the portions of the SCC mail policies dealing with its  
11 right to restrict access to certain materials. Dkt. 79 at 1-5. Defendants maintain that they  
12 interpret Mujahid's complaint and pleadings "to state that he is in fact specifically  
13 challenging the SCC policies regarding restricting access to certain items received  
14 through the mail," and, as their motion for summary judgment addresses, ask that the  
15 claims be dismissed. *Id.*

16 In Mujahid's objections, he states that he is not challenging the right of the SCC to  
17 disallow "'sexually explicit, violent and related material' nor any other type of  
18 publication that is in opposition to 'treatment.'" Dkt. 80 at 1. Rather, Mujahid maintains  
19 that the Clinical Director's Pre-Approved Magazine List ("CDPAML") restricts and  
20 limits only publications to SCC's list and violates freedom of the press." *Id.* The Court  
21 notes that Mujahid does not specifically allege a freedom of the press claim in his  
22 complaint; however, Mujahid does allege a general First Amendment claim regarding his  
right to receive certain mail and the Court will consider this issue de novo as both parties  
objected to the R&R on this issue.

1       The two policies that Mujahid challenges in his complaint are SCC Policy 202—  
2 Resident Postage, Packages, Mail & Internal Distribution (Dkt. 28, Ex. B) and SCC  
3 Policy 208—Sexually Explicit, Violent and Related Material (Dkt. 28, Ex. C). *See* Dkt.  
4 78 at 6-9 (R&R giving further details regarding these policies). In Mujahid’s objections  
5 to the R&R, he states that the SCC violates his rights by establishing the CDPAML rather  
6 than using an “SCC Approved Publication List,” because such practice “restricts, censors,  
7 and limits any and all publications.” Dkt. 80 at 1. Defendants maintain that SCC  
8 Policies 202 and 208, including the use of the CDPAML, do not violate Mujahid’s  
9 constitutional rights because the policies are an exercise of SCC officials’ professional  
10 judgment regarding what incoming media they will allow the SCC residents to view.  
11 Dkt. 79 at 3. Defendants point out that the courts have already concluded multiple times  
12 that the SCC’s mail policies, and specifically SCC Policy 208, are rationally related to the  
13 SCC’s legitimate interest in maintaining a therapeutic environment. *Id.* (citing *Spicer v.*  
14 *Richards*, C07-5109FDB/KLS at Dkt. 48; *Stewart v. Richards*, C08-5275RJB/KLS at  
15 Dkts. 24 & 27.)

16       In the United States Supreme Court case of *Turner v. Safley*, 482 U.S. 78 (1987),  
17 the court held that prison regulations which implicate an inmate’s constitutional rights  
18 will be considered valid as long as they are reasonably related to legitimate penological  
19 interests. *Id.* at 89.

20       Although it is somewhat unclear whether Mujahid is simply challenging the  
21 policies as violating the First Amendment, or making an additional allegation that he, as a  
22 resident not receiving treatment, is being treated differently regarding the mail policies

1 | than someone who is receiving treatment, the result is the same. Under both scenarios,  
2 | the Court concludes that SCC Policies 202 and 208 do not violate Mujahid's  
3 | constitutional rights because the SCC has a legitimate interest in regulating what media  
4 | its residents are allowed to view. As Judge Strombom found in an earlier case involving  
5 | SCC mail policies, the Court concludes that the state's interest in providing a proper  
6 | treatment, and treatment environment, to sexually violent predators outweighs Mujahid's  
7 | interest in viewing materials which the SCC staff deems counter-therapeutic or otherwise  
8 | harmful to the public, SCC residents, and staff. *See Spicer*, C07-5109FDB/KLS at Dkt.  
9 | 48; *Stewart*, C08-5275RJB/KLS at Dkts. 24 & 27. In addition, the Court concludes that a  
10 | resident's status, as one participating or not participating in treatment, is a legitimate  
11 | factor for the SCC to use in considering what media to allow the resident to view. As the  
12 | Supreme Court has stated, the burden "is not on the State to prove the validity of prison  
13 | regulations but on the prisoner to disprove it." *Overton v. Bazzetta*, 539 U.S. 126, 132  
14 | (2003). Here, Mujahid has failed to do so and Defendant's motion for summary  
15 | judgment on his claims regarding the SCC mail policies is granted.

### 16 | **C. Mujahid's Due Process Claims**

17 | Next, Defendants object to the magistrate judge's finding that their motion for  
18 | summary judgment did not address Mujahid's claim that "his due process rights were  
19 | violated when SCC Defendants failed to provide him with notice after rejecting and/or  
20 | before trashing mail sent to him" (Dkt. 78 at 14). *See* Dkt. 79 at 5-6. Defendants  
21 | maintain that their motion did address this issue and that the Court should grant the  
22 | motion based on Mujahid's failure to present evidence to support his claim. *Id.*

1 Although the Court could read Defendants' motion as addressing the issue regarding  
2 Mujahid's assertions that his mail was thrown in the trash, the Court concludes that  
3 Defendants' motion is not entirely clear, especially with respect to the notice, or lack  
4 thereof, given to Mujahid. *See* Dkt. 43 at 10-12. Therefore, the Court concludes that the  
5 R&R should be adopted on this claim and Defendants' motion, to the extent it addressed  
6 Mujahid's due process claim, is denied.

7 **D. Qualified Immunity**

8 Finally, Defendants object to the magistrate judge's finding regarding qualified  
9 immunity and maintain that Defendants are entitled to such immunity on Mujahid's free  
10 exercise of religion and freedom of association claims because he failed to demonstrate  
11 that any of the Defendants personally participated in violating these rights. Dkt. 79 at 7-  
12 8. Under the doctrine of qualified immunity, liability under § 1983 must be based on a  
13 defendant's personal participation in the violation the plaintiff's constitutional right.  
14 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

15 Having reviewed the record in this case, the Court concludes that Defendants'  
16 motion on Mujahid's claims for free exercise of religion and freedom of association  
17 should be granted based on Mujahid's failure to show personal participation on the part  
18 of any of the named Defendants. Although Mujahid asserts that several religious  
19 publications, books, and magazines were trashed and/or were rejected, Mujahid only  
20 refers to "unidentified SCC mailroom staff" and fails to provide any evidence to support  
21 that one of the named defendants personally participated in these acts. *See* Dkts. 1, 49, &  
22 80. Accordingly, because Mujahid is attempting to hold Defendants liable in their

1 personal capacities and because he fails to show their personal participation in these  
2 alleged acts, his claims for free exercise of religion and freedom of association must be  
3 dismissed based on qualified immunity.

4 **III. ORDER**

5 Therefore, the Court hereby:

6 (1) **ADOPTS** in part and **DECLINES to ADOPT in part** the R&R (Dkt. 78)  
7 as discussed herein;

8 (2) **ORDERS** that Mujahid's claims are **DISMISSED** with the exception of  
9 his claim for violation of his due process rights.

10 Dated this 16<sup>th</sup> day of February, 2012.

11  
12 

13 BENJAMIN H. SETTLE  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22